IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

REVIEW PETITION NO. 42 OF 2004
IN
NOTICE NO. 1007 OF 2004
IN
SUIT NO. 3432 OF 1987

Moolchand Kaluchand Ranka & Ors. .. Petitioners.
(Orig.Plaintiffs)
v/s.
Manohar Vithal Telang & Ors. ..Respondents
(Orig.Defendants)

Mr. P.K. Samdani i/b. Kishore Thakordas for the Petitioner.
Mr. D.A. Joseph i/b. David and Associates for the Respondent no.1.

CORAM: S.J. VAZIFDAR, J.

DATE : 25TH NOVEMBER, 2004.

P.C. :

1. A review is sought of my order dated 2nd September, 2004 on the ground that though there is no infirmity in the order on the basis on which it was argued on behalf of the Petitioner/Plaintiff the point that was argued ought not to have been argued as it was contrary to the record and facts. The argument was made as a result of a communication gap

between the Attorney and the Counsel. In other words Mr. Samdani's contention is that the argument that the Plaintiff is not liable to provide alternate accommodation on the true construction of the consent terms ought not to have been advanced as it was contrary to the record and was never the stand of the Plaintiff.

2. On facts, I find it difficult to accept that the matter was argued a result of any communication gap between the Attorney and the Advocate. The Attorney was present in Court instructing the Counsel during the hearing. An appeal being Appeal No. 678 of 2004 was filed against the order. If the ground of a communication gap was factually correct the same would have been clarified in the Memo of Appeal filed by the Plaintiff. There is no ground in the Memo of Appeal which even remotely suggests the same. The appeal was filed through the same Attorney. These facts belie the basis on which the order is sought to be reviewed.

3. Faced with this Mr. Samdani suggested that there was a communication gap between the partner of the solicitors firm who was earlier attending to the matter and the one who attended the matter during the hearing. This is not the basis of the Review

Petition.

4. Mr. Samdani, stated that infact alternate accommodation was offered by the Plaintiff to the Defendants as per the said consent terms dated 28th April, 1998. This he sought to establish inter-alia on the basis of letters dated 24th January 1990, 14th February 2002, 15th February 2002 and 16th February 2002 as well as the two Affidavits dated 18th November, 2003 and 14th November, 2003.

5. It is not for me to conjecture as to why a particular stand was taken before me. This is not a case of any error of fact on the part of the advocates. This was a case of a party choosing to take a particular stand based on the interpretation of the document. Indeed there is much to be stated as to whether infact alternate accommodation was infact offered by the Plaintiffs in accordance with the terms of the consent terms. It cannot be ruled out that in view of a possibility of the court taking a view that the Plaintiff had not infact complied with its obligations in this regard it was necessary to take a stand such as the one taken was before me.

6. The Judgments relied upon by Mr. Samdani in the case of *C. Rangaiah and Ors vs. Assistant*

Commissioner Titpur, 1997 AIHC 4136, Jamna Kuer vs. Lal Bahadur & others AIR(37) 1950 Federal Court 131, M.K. Venkatachalam, I.T.O. vs. Bombay Dyeing and Mfg.Co.Ltd. AIR 1958 S.C. 875, and In re: Mahamaya Banerjee AIR 1989 Calcutta 106. are therefore of no assistance to him.

7. As far as the grievance regarding the finding of suppression is concerned, the same can only be agitated in Appeal. In the circumstances, the Review Petition is dismissed. There shall be no orders as to costs.

SD/-

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